SBCivil Writ Petition No.5574/2004

Smt.Geeta Devi & Anr.
v.
State of Rajasthan & Ors.

Date of Order :: 11th May, 2006

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. B.R.Mehta, for the petitioners.
Mr. B.L.Tiwari, Dy.Govt.Advocate.

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By this petition for writ a challenge is given by the petitioners to the validity, propriety and correctness of the judgment dated 8.4.2004 passed by Board of Revenue for Rajasthan, Ajmer in Revision Petition No.Revision/Stamp/165/2002/Chittorgarh.

The facts necessary to be noticed for adjudication of present writ petition are that both the petitioners are widow of Late Shri Baijnath Yogi who executed a will in favour of the petitioners that bequeath the property with equal share to the petitioners. The petitioner No.1 by a release deed dated 28.5.1997 renounced her interest share and part in the property concerned in favour of the petitioner No.2. The release deed was executed on a stamp duty of Rs.100/- but the Sub Registrar, Chittorgarh by treating the release deed as conveyance under Article

23 of Schedule-II of the Rajasthan Stamp Law (Adoption) Act, 1952 (hereinafter referred to as “the Act of 1952”) made a reference to the Collector under Section 47-A of the Indian Stamps Act. The Collector (Stamps) Circle, Bhilwara by order dated 7.2.2002 accepted the reference and ordered for satisfying the deficiency in stamp duty with fine in a tune of Rs.47,600/-. The petitioners being aggrieved by the same preferred a revision petition before Board of Revenue for Rajasthan, Ajmer giving challenge to the order dated 7.2.2002. The Board of Revenue by its judgment dated 8.4.2004 rejected the revision petition preferred by the petitioners by holding that document presented by the petitioners for registration is not a release as defined under Article 55(a) but is a release deed under clause (b) of Article 55 of Schedule-II, therefore, is liable to same duty as on conveyance for the amount equal to the market value of share, interest or claim renounced.

Being aggrieved by judgment dated 8.4.2004 this petition for writ is preferred with an allegation that the Board of Revenue while examining validity of the order dated 7.2.2002 has taken into consideration the provision which came into force on 14.5.1999 and that is having no application for the document presented for registration on 28.5.1997.

A reply to the writ petition has been filed on behalf of the respondents stating therein that the Collector (Stamps) Circle, Bhilwara as well as the Board of Revenue have not committed any error which may warrant interference of this Court under Article 227 of the Constitution of India.

Heard counsel for the parties.

Article 55, after 30.3.1997 and on the date of presenting document for its registration, was as under:-

"New Art.55-Release:that is to say any instrument (not being such a releases is provided for by section 23-A) where by a co-owner, co-sharer or coparcener renounces his interest, share, part or claim in favour of another co-owner, co-sharer or coparcener.	
(a)If the release is made of ancestral property in favour of brother or sister (children of renouncer's parents) or son or daughter of father or mother or spouse of the renouncer."	Rs.100.00

An amendment was introduced in Article 55 which came into force on 14.5.1999 and that reads as under:-

(a)if the release deed of an ancestral property or part thereof is executed by or in favour of brother or sister (children of renouncer's parents) or son or daughter or son of predeceased son or daughter of a predeceased son or father or mother, or spouse of the renouncer or the legal heirs of the above relatives.	One hundred rupees.
(b)in any other case.	Same duty as on conveyance (no.23) for the amount equal to the market value of the share interest, part or claim renounced."

In the instant matter the document was presented for its registration before the Sub Registrar, Chittorgarh on 28.5.1997 i.e. prior to 14.5.1999. There is no doubt that both the petitioners were co-sharer of the property and the petitioner No.1 renounced her share in favour of the petitioner No.2. Prior to 14.5.1999 a renouncement of share in favour of co-sharer was a release and the distinction as held by Board of Revenue came into force on 14.5.1999, therefore, case of the petitioners is treated by the Board of Revenue under clause (b) of Article 55. The Article 55(b) was not at all in existence on the day the release deed was presented by the petitioners for

its registration before the Sub Registrar, Chittorgarh. Being erroneously treated the document presented by the petitioners for is registration as a release under clause (b) of Article 55 the petitioners could not be held liable to be charged by duty as conveyance for the amount equal to the market value of the share interest part of claim renounced. The case of the petitioners was required to be considered in accordance with Article 55 as existing prior to 14.5.1999 according to that a renounce made by a co-sharer is to be treated as release.

The document presented by the petitioners for its registration before the Sub Registrar, therefore, is neither a release deed under clause (b) of Article 55 as existing today and is also not a conveyance as prescribed under Article 23 of Schedule-II appended with the Act of 1952. It is nothing but a release under Article 55 that clearly refers the renounce made by a co-sharer in favour of another. The orders passed by the Collector as well as Board of Revenue, therefore, are illegal and deserve to be quashed.

Accordingly this petition for writ is allowed. The order dated 7.2.2002 passed by the Collector (Stamps) Circle, Bhilwara as well as order dated 8.4.2004 passed by the Board of Revenue are hereby quashed. The document presented by the petitioners before the Sub Registrar, Chittorgarh on

28.5.1997 (Anx.1) is declared as a release under Article 55 as existing on 28.5.1997 and is liable to be charged a duty in a tune of Rs.100/- only.

No order to cost.

(GOVIND MATHUR),J.

kkm/ps.